IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.3 OF 1988

U.V. Benadikar, of Kolhapur
Indian Inhabitant, residing at
1990/"E", 8th Lane, Rajarampuri
Kolhapur - 416 001 .. Petitioner.

V/s.

N.G. Kulkarni, of Kolhapur
Indian Inhabitant, having his
office at 37, Shivaji Udyan
Nagar, Kolhapur - 416 001. .. Respondent.

Dr.Virendra Tulzapurkar, Senior counsel with Ms.S. Srikrishna i/b. Kanga & Co. for the petitioner.
Mr.S.S. Pakale for Union of India.
Respondent absent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 6TH AUGUST, 2004.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

. This reference is under sub-section 5 of Section 21 of the Chartered Accountants Act, 1949 (for short ‘the Act of 1949’).

2. One Mr.U.V. Benadikar (for short ‘the complainant’) filed a complaint dated December 18, 1978 against Mr.N.G. Kulkarni (for short ‘the respondent’) under Section 21 of the Act of 1949.

3. The complainant was articled clerk with the respondent for the period from June 15, 1976 to November 24, 1978. According to him he wanted to take transfer from the respondent but the respondent refused to sign on form No.20A. The complainant alleged that when he went to the respondent for signing form No.20A the respondent orally told him that he would sign on form No.20A only if he (the complainant) gave him receipts for receipt of stipend without receiving the same. The complainant refused to do so and consequently the respondent refused to sign form No.20A. The complainant levelled three charges of misconduct against the respondent in his complaint namely (i) non-payment of monthly stipend for the period during which the complainant worked as article clerk with the respondent; (ii) refusal by the respondent to sign on form No.20A when the complainant sought transfer, and (iii) the complainant was asked to work in excess of the prescribed working hours. The respondent denied the charges.

4. The Disciplinary Authority recorded the evidence and upon conclusion of the enquiry found that the respondent has not paid the full amount of stipend due to the complainant during the period of

his articles; that the respondent refused to sign the form No.20A and that the complainant was compelled to work for the working hours exceeding the prescribed 35 hours under the Regulation. The Council accepted the findings of the Disciplinary Authority insofar as the findings on charges relating to non-payment of monthly stipend and excess working hours were concerned but did not concur with the finding of the Disciplinary Authority insofar as the charge relating to refusal to sign form No.20A was concerned. Having accepted the findings of the Disciplinary Authority with regard to non-payment of monthly stipend and excess working hours, the Council in its minutes of the meeting held on August 4, 1987 recommended to this Court that the respondent be reprimanded. This is how this reference under sub-section 5 of Section 21 is before us.

5. We are, thus, concerned only with two charges which have been found against the respondent. The said charges as indicated above relate to non-payment of monthly stipend and working hours in excess of normal working hours. Non-payment of stipend if proved shall be a misconduct being in breach of Regulation 32B and the charge relating to excess working hours in excess of normal working

hours if proved shall amount to breach of Regulation 45 and thus professional misconduct under Clause (i) of Part II of Second Schedule.

6. We shall first advert to the first charge relating to non-payment of monthly stipend. Before the Disciplinary Authority, the respondent admitted that he did not pay stipend to his article clerks every month. He also admitted that he used to make payment of stipend to his article clerks at intervals. The defence set up by the respondent was that Regulation 32B did not obligate upon the respondent to make payment of stipend to article clerk every month. According to the respondent Regulation 32B only provides that article clerks shall be paid minimum monthly stipend at the rate specified in sub-regulation 2 or sub-regulation 3 thereof; it does not provide for monthly stipend being paid every month. The construction of Regulation 32B putforth by the respondent was negatived by the Disciplinary Authority. The finding of the Disciplinary Authority has been accepted by the Council and in our view rightly. Relevant part of Regulation 32B reads thus :

"32B. Stipend to Articled Clerks.

> (1) Every member engaging an articled clerk on or after 1st July 1973 shall pay to such clerk a minimum monthly stipend at the rates specified in sub-regulation (2) or in sub-regulation (3) hereof, as the case may be.
>
> (2) ----------
> (3) ----------
> (4) ----------

7. When the provision is made in Regulation 32B; that every articled clerk on or after the specified date shall be paid a minimum monthly stipend obviously what it provides for is a stipend to be paid to a articled clerk by the member every month. It does not mean that the monthly stipend payable to the articled clerk by the member may be paid collectively yearly, half yearly, quarterly or collectively for any period of months at any point of time. Such construction of sub-regulation (1) of Regulation 32B would not be sensible. Even if Regulation 32B did not provide for the period by which the monthly stipend was payable by the member to the articled clerk, obviously it has to be paid during the succeeding month and not at the intervals of the choice of the member. The Disciplinary Authority referred to the judgment of the Delhi High Court in the case of the Institute of Chartered Accountants of India V/s. Shri Radhey Mohan [Chartered Accountants Case No.1 of 1978]. The Delhi High Court was seized with the question whether Shri

Radhey Mohan, the respondent therein and member of the Institute of Chartered Accountants of India had paid monthly stipend to the complainant Shri Satyendra Kumar who entered into articles of the respondent. The Delhi High Court considered the matter thus :

> . "In our opinion, the argument that Regulation 32B required a monthly rate and not that payment should be made every month and so, if Shri Radhey Mohan had agreed to pay on yearly basis at a monthly rate which was not less than what was provided by Regulation 32B (2) of (3) is an afterthought. Shri Radhey Mohan admitted in his statement before the Disciplinary Committee of the Institute that to his other Article Clerks he was paying the stipend every month. He had never raised this contention, as urged before us now, in any of his replies to the Council. We are of the view that Shri Radhey Mohan clearly understood Regulation 32B to mean that payment had to be made every month. For one reason or another he was not making that payment every month and admittedly paid Satyendra Kumar Gupta after he had left him, having worked there for quite a few months. This was clearly in violation of the provisions of Regulations 32B(1). The construction now sought to be put on Regulation 32B though not plausible at all could have been relied upon by him had he raised this point in the very beginning. He did not do so. It was only during his deposition before the Disciplinary Committee that a suggestion to that effect was made. There was explanation from Shri Radhey Mohan as to why he was paying on monthly basis to other Article Clerks, if that was his understanding or reading of Regulation 32B. We, therefore, accept the findings of the Disciplinary Committee and the Council that Shri Radhey Mohan acted in

breach of Regulation 32B."

8. We are in respectful agreement with the view of the Delhi High Court and we have no hesitation in holding that on reading of Regulation 32B the only meaning that flows therefrom is that the monthly stipend shall be paid every month and not that the payment of stipends may be made of any particular period at the monthly rate at any time. That is the only meaning of Regulation 32B and no other. The legal position that we have noticed above and the admitted position that the respondent did not pay monthly stipend to the complainant, the finding recorded by the Disciplinary Authority and confirmed by the Council that the respondent did not pay full payment of stipend due to the complainant during the period of his article and, accordingly, the respondent was guilty of professional misconduct, cannot be faulted.

9. As regards the other charge of working hours in excess of normal hours, the few facts went unrebutted and unchallenged before the Disciplinary Authority. These facts are (one) that the respondent did not maintain any record showing actual hours worked by the clerks (two) that the office of the respondent would open from 9.30 a.m. to 8.30 p.m.

and the article clerks work between 11.00 a.m. to 5.30 p.m. and (three) that the office of the respondent would remain open all 365 days i.e. the office would remain open on all Sundays and Public Holidays.

. Though the respondents explanation was that the work by articled clerks on Sundays and Public Holidays was voluntary and, therefore, it cannot be said that the working hours of the articled clerks were in excess of the prescribed 35 hours a week, we are afraid the facts and circumstances which came on record before the Disciplinary Authority were eloquent enough to leave no manner of doubt that in the set up of the respondent, the articled clerks were required to work exceeding 35 hours a week in contravention of Regulation 45.

10. We, accordingly, accept the findings of the Disciplinary Authority concurred by the Council on both the charges. We also, accordingly, accept the recommendation of the Council and order that the respondent, the member of the Institute be reprimanded.

11. Order accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)